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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**
18

19 DAVID M. CATHCART, JAMES H.
WHITEHEAD, ROBERT W. DECKER, DALE
20 BALDISSERI, individually, and on behalf of all
others similarly situated,

21 Plaintiff,

22 v.

23 SARA LEE CORPORATION, SARA LEE
24 BAKERY GROUP, EARTHGRAINS BAKING
COMPANIES, INC. (formerly sued as DOE 1)
25 and DOES 2 through 20,

26 Defendants.
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Case No. CV 09-5748 MMC

**STIPULATION FOR LEAVE TO
MODIFY THE SCHEDULING ORDER
TO EXTEND HEARING DATE AND
MEDIATION CUT-OFF**

~~PROPOSED~~ ORDER

The Honorable Maxine M. Chesney

Complaint filed: December 8, 2009

1 The parties stipulate as set forth in the numbered paragraphs below, based on the
2 following facts:

- 3 A. The Scheduling Order (Dkt. No. 33) set initial deadlines in this case. The Order
4 scheduled, among other things, dates for briefing the parties' motions and cross-
5 motions for summary judgment on two affirmative defenses.
- 6 B. The parties have stipulated to extensions of those deadlines, most recently in order to
7 accommodate conflicts for both parties that had arisen with the then scheduled
8 hearing and mediation dates, and to adjust the summary judgment hearing date and
9 mediation cut-off accordingly (*see* Dkt. No. 67).
- 10 C. However, Jerome Jauffret, the attorney for defendants who is the primary drafter of
11 the moving and opposition papers for the motions for partial summary judgment, and
12 is responsible for arguing those motions, has just been diagnosed with a medical
13 condition (herniated disk) which is causing him constant severe pain in his right
14 shoulder, arm and hand, loss of sensation in part of his right hand, and temporary
15 inability to effectively use his right arm and hand even with the use of strong pain
16 medication (Vicodin), which would make travelling to San Francisco and attending
17 the hearing on November 4, 2011 extremely painful and difficult and is not
18 recommended by his physician. Please also note that Mr. Jauffret is right handed.
19 Defendants therefore seek to continue the hearing on the motions for partial summary
20 judgment to December 2, 2011, and Plaintiffs concur. This is earliest available date
21 for the parties because November 11, 2011 and November 25, 2011 are court
22 holidays, and Plaintiffs' counsel is not available on November 18, 2011 because of
23 hearings that date in Southern California in other class actions, one in the morning
24 and one in the afternoon. In addition, the parties believe a successful mediation
25 depends on a ruling on the summary judgment motions. Thus, Defendants propose a
26 continuation of the mediation cut-off deadline, from December 21, 2011 to January
27 31, 2012, and Plaintiffs concur. The parties have agreed to hold the mediation on any

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of the following dates available for the mediator, pending the Court's approval of this stipulation: January 9, 12 or 13, 2012.

D. The current deadlines are as follows:

a. Hearing on above motion and cross-motion: November 4, 2011, 9:00 a.m.

b. Deadline to complete mediation December 21, 2011

E. Note that the discovery and motion deadlines have previously been continued by stipulated order (see Docket Nos. 35, 44, 52, 56, 58, 60, 63 and 67). The deadline to complete mediation has also been continued by stipulated order, to fall after the hearing on the parties' motions for summary judgment (see Docket Nos. 54, 58, 60, 63 and 67).

F. Note also that the deadline for Plaintiffs to file a motion for class certification is not until March 23, 2012. The hearing on the motion for class certification is scheduled for July 20, 2012. There is no trial date scheduled, but after the hearing on the motion for class certification, a Case Management Conference is scheduled for August 31, 2012. This stipulation does not seek to move those dates.

WHEREFORE, THE PARTIES STIPULATE and request that the Court order that the Scheduling Order (Docket No. 33) be modified to reflect the deadlines listed below:

1. Hearing on partial motions for summary judgment:

Continue from November 4, 2011 to December 2, 2011.

2. Deadline to complete mediation:

Continue from December 21, 2011 to January 31, 2012.

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1 In compliance with General Order No. 45 (X), as filing party, Defendants attest that all
2 signatories below concur in the filing of this document.

3 DATED: November 1, 2011

MAYER BROWN LLP
JOHN NADOLENCO
JEROME JAUFFRET
KRISTEN ROWSE

6 BY: /s/ John Nadolenco
John Nadolenco
7 Attorneys for Defendants
8 SARA LEE CORPORATION, SARA LEE
BAKERY GROUP and EARTHGRAINS
9 BAKING COMPANIES, INC.

10 DATED: November 1, 2011

SPIRO MOSS LLP

11 BY: /s/ Ira Spiro
12 Attorneys for Plaintiffs

13
14 **[PROPOSED] ORDER**

15 SO ORDERED as stated in paragraphs 1 and 2 above.

16
17 DATED: November 2, 2011


MAXINE M. CHESNEY
United States District Judge